

Message Text

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TO AMEMBASSY PANAMA IMMEDIATE

C O N F I D E N T I A L STATE 197235

E.O. 11652: GDS

TAGS: PBOF, PN

SUBJECT: TREATY NEGOTIATIONS: TREATY DRAFTS

REF: PANAMA 5798

1. FOLLOWING PARAGRAPH THIS MESSAGE PROVIDE OUR DETAILED TEXTUAL COMMENTS ON JOINT DRAFTS CONTAINED IN REFTEL. AT OUTSET, HOWEVER, WE WOULD LIKE TO FLAG IMPLICATIONS OF APPARENT DESIRE OF PANAMANIAN TO SUBSUME INTO TREATY ALL OR MOST OF U.S. DRAFT IMPLEMENTING AGREEMENT. THIS WILL TEND TO MAGNIFY PROVISIONS OF SUBSTANTIAL DETAIL ON SUCH MATTERS AS FLAGS AND CRIMINAL JURISDICTION AS COMPARED WITH CASE IF THESE WERE IN A SUBORDINATE DOCUMENT. SECONDLY, UNLESS EXTREME CARE IS EXERCISED IN DRAFTING PROCESS, THERE MAY BE CONFLICTING OR OVERLAPPING PROVISIONS BETWEEN TREATY
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ARTICLES AND THOSE OF SOFA, GOVERNING MILITARY PERSONNEL, CIVILIAN COMPONENT AND THEIR DEPENDENTS. WE OF COURSE WOULD NOT WANT TO REOPEN SOFA, AND TRUST PANAMA ALSO SHARES THIS VIEW.

2. ARTICLE VIII - FLAGS: O.K. WE WILL BE BACK TO YOU ON QUESTION RAISED PARAGRAPH 4 CONCERNING AGREEMENT REACHED BY AMBASSADORS BY SEPTTEL.

3. ARTICLE IX - PRIVILEGES AND IMMUNITIES: O.K. EXCEPT

THAT WE WOULD PREFER DELETION OF NEW SENTENCE AT END OF PARAGRAPH 1 BECAUSE IT WOULD APPEAR TO COMMIT USG TO AGREE IN ADVANCE TO PANAMANIAN CRIMINAL INVESTIGATIONS IN U.S. INSTALLATIONS. IF PANAMANIAN INSIST, WE COULD ACCEPT FOLLOWING VERSION: "THE TWO GOVERNMENTS SHALL AGREE ON PROCEDURES TO BE FOLLOWED IN THE CONDUCT OF ANY CRIMINAL INVESTIGATIONS BY PANAMANIAN AUTHORITIES INVOLVING SUCH LOCATIONS."

4. ARTICLE X - APPLICABLE LAWS, ETC.

(A) NEW PARAGRAPH 1 IS ACCEPTABLE, BUT IN LAST CLAUSE WE WOULD LIKE YOU TO ADD, IF IT CAN BE DONE CONVENIENTLY, THE WORD "EXPRESSLY" BEFORE "PROVIDED." EXPLANATION: WE RECOGNIZE THIS LANGUAGE WAS AGREED BEFORE CHIEF NEGOTIATORS LEFT LAST WEDNESDAY, BUT FEEL THE ADDITIONAL WORD IS USEFUL; HISTORY OF PANAMANIAN EFFORTS TO ASSERT THAT THEIR LAWS, PARTICULARLY TAX LAWS, APPLY IN CANAL ZONE UNDER PRESENT TREATIES INDICATES THAT WE SHOULD GIVE THEM NO PRETEXT, UNDER ANY KIND OF INTERPRETATION OF LANGUAGE OF THOSE TREATIES, FOR CONTINUING THAT POSITION UNDER NEW TREATY.

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(B) NEW PARAGRAPH 8 SHOULD BE MODIFIED TO READ AS FOLLOWS: "THE REPUBLIC OF PANAMA SHALL NOT ISSUE, ADOPT OR ENFORCE ANY LAW, DECREE, REGULATION, OR INTERNATIONAL AGREEMENT OR TAKE ANY OTHER ACTION" EXPLANATION: CHANGE FOR PURPOSES OF CLARITY AND STYLE ONLY.

(C) IN NEW PARAGRAPH 9, FIRST SENTENCE, THE WORD "OF" IS AN APPARENT TYPOGRAPHICAL ERROR. DELETE SUPERFLUOUS COMMA AFTER "VESSELS".

IN PARAGRAPH 9, THIRD SENTENCE, SUBSTITUTE "VESSELS" FOR "SHIPS" TO CONFORM WITH USAGE IN PRECEDING SENTENCES.

(D) IN NEW PARAGRAPH 10 INSERT "ITS PROPERTY," AFTER FIRST REFERENCE TO PANAMA CANAL COMMISSION, INSERT A COMMA FIVE WORDS LATER, BETWEEN "DEPENDENTS" AND "AND PROPERTY," AND INSERT A COMMA AFTER SECOND REFERENCE TO "CIVILIAN COMPONENT." IN LAST SENTENCE DELETE WORDS "SEEK THE ISSUANCE OF" AND SUBSTITUTE "ENACT". EXPLANATION: WE RECOGNIZE THESE CHANGES RELATE TO WORDS OR STYLE FOUND IN ORIGINAL U.S. TEXT. NONETHELESS, WE FEEL YOU SHOULD TRY TO OBTAIN THE CHANGES, SINCE THEY HAVE SUBSTANTIVE EFFECT, ALBEIT MODEST, WHICH WOULD BE USEFUL TO ACHIEVE. IN PARTICULAR, WITH RESPECT TO CHANGE OF "ENACT" FOR "SEEK", WE TAKE VIEW

THAT, SINCE THIS IS A TREATY, PANAMANIAN COMMITMENT SHOULD BE TO CARRY OUT ITS TERMS, AND NOT SEEK TO DO SO.

5. ARTICLE XI - CRIMINAL JURISDICTION: WE ASSUME THAT THIS ARTICLE WILL NOT BE ELEVATED TO TREATY SINCE, IN SUCH CASE, IT COULD BE CONSTRUED AS APPLYING TO U.S. FORCES OR OTHERWISE IN DEROGATION OF SOFA. THIS WOULD ALSO REQUIRE INCLUSION IN TREATY OF DEFINITIONS FROM BOTH SOFA AND AGREEMENT IN IMPLEMENTATION OF ARTICLE III. SEE GENERAL COMMENT IN THIS REGARD IN PARAGRAPH 1 OF THIS CABLE.

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CHANGES TO EXISTING TEXT THROUGH NEW PARAGRAPH 11 ARE ALL ACCEPTABLE.

WITH RESPECT TO NEW PARAGRAPH 12 WE WILL PROVIDE LANGUAGE IN A SEPTTEL.

6. ARTICLE XVI - TRANSITIONAL PROVISIONS.

(A) WE WOULD LIKE TO RETAIN WORD, "CALENDAR." THIS RESOLVES ALL DOUBTS AS TO WHETHER 30-DAY MONTHS WERE INTENDED BY SPECIFYING CALENDAR MONTHS. IN AGREEMENTS IN WHICH FIXING A DATE IS KEY, WE ALWAYS SEEK TO INCLUDE THE WORD "CALENDAR."

(B) ADDITION OF WORDS "IN THE FOLLOWING CASES" IS ACCEPTABLE BUT YOU WILL HAVE TO RENUMBER PARAGRAPHS OR INDENT APPROPRIATELY TO TAKE ACCOUNT OF FIRST FULL SENTENCE OF SUBPARAGRAPH (II) OF PARAGRAPH 2(A).

(C) REGARDING P. 24, LINE 2, CHANGE IS ACCEPTABLE TO US WHICH OBVIATES NEED TO SUPPLY YOU WITH REQUESTED PRECEDENTS.

7. IN AGREED MINUTE TO ARTICLE XI, WE CANNOT ACCEPT PHRASE "AS A MATTER OF GENERAL POLICY", SINCE THIS CONVEYS CLEAR IMPLICATION THAT PANAMA MAY NOT IN FACT WAIVE.

8. ARTICLE XX - ENTRY AND DEPARTURE.

IN PARAGRAPH 6, FIRST SENTENCE, WE ARE CONCERNED ABOUT ADDITION OF PROPOSED PHRASE REGARDING CHARGES FOR USE OF AIRPORTS, ALTHOUGH WE NOTE THIS IS FOUND IN AGREED TEXT
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BROUGHT BACK BY NEGOTIATORS LAST WEDNESDAY NIGHT. AS WORDED, THE PHRASE WOULD APPLY TO ALL U.S. PERSONNEL, INCLUDING THOSE COVERED UNDER SOFA, IF PROVISION IS ELEVATED INTO TREATY. AN OBLIGATION TO PAY SUCH CHARGES

WOULD BE IN DEROGATION OF SOFA EXEMPTIONS. EVEN IF IT

REMAINS IN IMPLEMENTING AGREEMENT, IT COULD BE CONSTRUED TO APPLY TO U.S. MILITARY AIRPORTS AND PANAMANIAN CIVIL AIRPORTS, AS WELL AS PERSONS ARRIVING ON U.S. MILITARY AIRCRAFT. REQUEST YOU SEEK ELIMINATION OF EXCEPTION RE AIRPORT CHARGES.

9. ARTICLE ON SERVICES AND INSTALLATIONS.

(A) WE ARE CONCERNED OVER DELETION OF PARAGRAPH 2, ALTHOUGH WE RECOGNIZE DELETION WAS MADE TO TEXT BROUGHT BACK BY NEGOTIATORS LAST WEDNESDAY. DELETION WOULD MAKE USG LIABLE TO CHARGES THAT WOULD INCLUDE DEPRECIATION AND RETURN ON CAPITAL ORIGINALLY PROVIDED BY USG. AS AN ALTERNATIVE, YOU MIGHT SUGGEST A PROVISION LIMITING CHARGES TO USG FOR USE OF THESE SERVICES AND INSTALLATIONS TO ACTUAL COST OF OPERATION AND MAINTENANCE.

(B) IF THIS ARTICLE IS INCLUDED IN TREATY (WHICH WE DO NOT FAVOR), WE WOULD PREFER TO RETAIN PHRASE IN OLD PARAGRAPH 3, "EXCEPT AS THE TWO GOVERNMENTS MAY OTHERWISE AGREE", WHICH APPEARS TO GIVE US A SLIGHT DEGREE OF ADDED FLEXIBILITY.

10. INTRODUCTION TO AGREEMENT IN IMPLEMENTATION. DELETION OF REFERENCE TO USE OF INSTALLATIONS IS NOT OBJECTIONABLE HERE, BUT IT REINFORCES OUR CONCERN OVER DELETION OF SIMILAR WORDS IN ARTICLE V (SEE STATE 195074, PARAGRAPH 1(P).)

11. OFFICIAL TEXT. WE CANNOT ACCEPT ANY LANGUAGE OTHER
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THAN ENGLISH AS EITHER OFFICIAL OR WORKING LANGUAGE OF A U.S. GOVERNMENT INSTRUMENTALITY.

12. ABOVE COMMENTS INCLUDE ALL OF OUR REMARKS ON ISSUES RAISED IN REFTEL EXCEPT QUESTION OF FLAGS AT ENTRANCE TO CANAL AND DRAFT LANGUAGE TO COVER TRANSFER OF SANCTIONS AGREEMENT. NEW TEXTS YOU HAVE GIVEN US IN REFTEL WHICH WE HAVE NOT COMMENTED UPON HAVE OUR CONCURRENCE. VANCE

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